BANGALORE ELECTRICITY SUPPLY COMPANY LIMITED

Tender enquiry No.: BESCOM/2023-24/SE0105
date– 12.02.2024

SECTION – III

GENERAL TERMS AND CONDITIONS OF CONTRACT

(GCC)

"Project Management Consultancy services to BESCOM for implementation of Upgradation of DAS in Bengaluru city Project"

ISSUED BY

General Manager (DAS, SG & TIC)

BICC-1, 23rd Main, 17th cross, 2nd sector, HSR Layout, Bangalore - 560102

E-mail: gmdas@bescom.co.in

Phone: 080-22586356, 9448279010

Section-III

GENERAL TERMS & CONDITIONS OF CONTRACT

A. INTRODUCTION

1. DEFINITION OF TERMS

Unless the context otherwise requires, the following terms whenever used in this Contract have the following meanings:

a) **"Applicable Law"** means the laws and any other instruments having the force of law in India, as they may be issued and in force from time to time;
b) **"Contract"** means the Contract signed by the Parties, together with all the documents listed in Clause 5 of this document;
c) **"Owner or Employer"** shall mean Bangalore Electricity Supply Company, Limited (BESCOM) and shall include its legal representatives, successors and assigns.
d) **"Contractor"/"Consultant"** shall mean the Bidder whose bid will be accepted by the Owner for the award of the Works and shall include such Contractor's legal representatives, successors and permitted assigns.
e) **"Bidder"** shall mean an individual bidder participating in the tender, who may be a registered sole proprietorship firm, a partnership firm or a company registered under companies' act.
f) **"Engineer"** shall mean the officer appointed by the Owner to act as Engineer from time to time for the purpose of the Contract.
g) **"Effective Date"** means the date on which this Contract comes into force
h) **"Contract Price"** means the price to be paid for the performance of the Services;
i) **"Government"** means the Government of Karnataka, an entity existing under the laws of the Republic of India or any second party, legislative body, department, political sub division, authority or instrumentality thereof.
j) **"Local currency"** means Indian Rupees;
k) **"Member"**, shall be the authorized representative of the Consultant to act on their behalf in exercising all the Consultant's rights and obligations towards BESCOM under this Contract.
l) **"Party"** means BESCOM or the Consultant, as the case may be, and Parties means both of them;
m) **"Personnel"** means persons hired by the Consultant as employees and assigned to the performance of the Services or any part thereof;
n) Words imparting the singular only shall also include the plural and vice – versa where the context so requires.
o) Words imparting 'Person' shall include firms, companies,

corporations and associations or bodies of individuals, whether incorporated or not.

p) 'Bidding Documents', 'Bid Documents' means Information & Instructions, General Conditions of Contract and other Annexures included in Sections IFB, ITB and GCC.

q) Terms and expressions not herein defined shall have the same meaning as are assigned to them in the Indian Sale of Goods Act (1930), failing that in the Indian Contract Act (1872) and failing that in the General Clauses Act (1897) including amendments thereof, if any

The various Acts and Regulations are normally available for sale from the following addresses:

i) Deputy Controller
Publication Department
Government of India
Civil Lines,
DELHI-110 006

ii) Dept. Of Publication
(Government of India),
Kitab Mahal Unit No.21, Emporia Building,
Baba Kharak Singh Marg,
NEW DELHI – 110 001

Or

With leading authorized Government of Indian Book-Sellers.

2. APPLICATION

These General Conditions shall apply to the extent that they are not superseded by provisions in other parts of the Contract.

3. STANDARDS

The services provided under this Contract shall conform to the standards mentioned in the scope of works. When no applicable standard is mentioned, the latest standards issued by the concerned institution shall be followed.

4. LANGUAGE AND MEASURES

All documents pertaining to the Contract including specifications, schedules, notices, correspondences, operating and maintenance instructions, drawings or any other writing shall be written in English language. The Metric System of measurement shall be used exclusively in the Contract.

5. CONTRACT DOCUMENTS

5.1. The term Contract Documents shall mean and include the following, which shall be deemed to form an integral part of the Contract:

a) Invitation to Bid including letter forwarding the Bidding Documents, Instructions to Bidders, General Terms and Conditions of Contract and all other documents.
b) Contractor's Bid Proposal and the documents attached there to including the letters of clarifications thereto between the Contractor and BESCOM prior to the Award of Contract except to the extent of repugnancy.
c) All the materials, literature, data and information of any sort given by the Contractor along with his bid, subject to the approval of BESCOM
d) Letter of Award and any agreed variations of the conditions of the documents, if any.

5.2. All Documents forming part of the Contract (and all parts thereof) are intended to be correlative, complementary and mutually explanatory. The contract shall be read as a whole.

5.3. In the event of any conflict between the above mentioned documents, the resolution shall be reached mutually by both the parties or through Mutual Arbitrator.

5.4. All the relevant Information/Material furnished by the Contractor such as Specifications of Material/Equipment, Design, Literature, Drawings or any other Data during the course of Contract will become the Property of BESCOM and BESCOM will have full rights to use the same elsewhere.

6. USE OF CONTRACT DOCUMENTS AND INFORMATION

6.1. The Contractor shall not, without BESCOM's prior written consent, disclose the Contract, or any provision thereof, or any specification, plan, drawing, pattern, sample or information furnished by or on behalf of BESCOM in connection therewith, to any person other than a person employed by the Contractor in the performance of the Contract. Disclosure to any such employed person shall be made in confidence and shall extend only so far as may be necessary for the purpose of such performance.

6.2. The Contractor shall not, without BESCOM's prior written consent, make use of any document or information enumerated in various Contract documents except for the purpose of performing the Contract.

6.3. The Contractor shall not communicate or use in advertising, publicity, sales releases or in any other medium, photographs or other reproduction of the Works under this Contract, or descriptions of the site, dimensions, quantity, quality or other information, concerning the works unless prior written permission has been obtained from BESCOM.

6.4. Any document, other than the Contract itself, enumerated in various Contract documents shall remain the property of

BESCOM and shall be returned (in all copies) to BESCOM on completion of the Contractor's performance under the Contract if so required by BESCOM.

7. INDEPENDENT CONTRACTOR

7.1. Consultant shall be an independent contractor performing the Contract. The Contract does not create any agency, partnership, joint venture or other joint relationship between the parties hereto.

7.2. Subject to provisions of the Contract, the Contractor shall be solely responsible for manner in which the Contract is performed. All employees, representatives or Subcontractors engaged by Contractor in connection with the performance of the Contract shall be under the complete control of the Contractor and shall not be deemed to be employees of BESCOM, and nothing contained in the Contract or in any subcontract awarded by the Contractor shall be construed to create any contractual relationship between any such employees, representatives or Subcontractors and BESCOM.

7.3. Consultant acknowledges that it is engaged as an independent contractor and that BESCOM shall have no responsibility to provide the Consultant or its employees with transportation, insurance or other fringe benefits normally associated with employee status. Consultant is responsible for all statutory deductions as applicable in law.

7.4. BESCOM and the contractor, respectively, bind themselves, their partners, successors, assigns and legal representatives to the other party to the terms and conditions of this contract.

8. CONSTRUCTION OF THE CONTRACT

8.1. Notwithstanding anything stated elsewhere in the bid documents, the Contract to be entered into will be treated as a single contract for the services to be delivered as detailed in the scope of works.

8.2. The Contract shall in all respects be construed and governed according to Indian Laws.

9. AMENDMENT

No amendment or other variation of the contract shall be effective unless it is in writing, is dated, expressly refers to the contract, and is signed by a duly authorized representative of each party hereto.

10. JURISDICTION OF THE CONTRACT

The laws applicable to the Contract shall be the laws in force in India. The Courts of Bengaluru City of Karnataka State in India shall have exclusive jurisdiction in all matters arising under this Contract.

11. MANNER OF EXECUTION OF THE CONTRACT

11.1. BESCOM after the issue of Letter of Intent to the Contractor, will send the final agreement content to the Contractor for contract agreement execution.

11.2. The contract, unless otherwise agreed to, shall be signed within 15 days of the acceptance of the Letter of Intent, at the office of BESCOM on a date and time to be mutually agreed. The Contractor shall provide for signing of the Contract, Performance Guarantee, appropriate power of attorney and other requisite materials. In case the Contract is to be signed beyond the stipulated time, the Bid Guarantee submitted with the Proposal will have to be extended accordingly.

11.3. Agreement shall be signed in duplicate and the Contractor shall be provided with one signed copy and BESCOM will retain the Original.

11.4. Within Fifteen (15) days from the date of receipt of this LoI, Contractor) shall submit the signed Non-disclosure agreement (on a Rs.200 Stamp paper) as per prevailing data sharing policy of BESCOM.

11.5. Subsequent to signing of the Contract agreement, the Contractor at his own cost shall provide BESCOM with at least 05 true Bounded Copies of Contract documents within thirty (30) days after the signing of the Contract.

11.6. BESCOM will issue Detailed Work Award (DWA) after receipt of Contract agreement, NDA and Performance Bank Guarantee.

12. ENFORCEMENT OF TERMS

The failure of either party to enforce at any time any of the provisions of this Contract or any rights in respect thereto or to exercise any option therein provided, shall in no way be construed to be a waiver of such provisions, rights or options or in any way to affect the validity of the Contract. The exercise by either party of any of its rights herein shall not preclude or prejudice either party from exercising the same or any other right it may have under the Contract.

13. COMPLETION OF THE CONTRACT

Unless otherwise terminated under the provisions of any other relevant clause, the contract period from date of issue of DWA shall be 10 months within which the works are to be completed unless extended, and the liability for the services delivered during the course of the contract shall be for the guarantee period as provided for under the clause B entitled 'Guarantees & Liabilities' in this section.

B. GUARANTEES & LIABILITIES

14. TIME – THE ESSENCE OF THE CONTRACT

14.1 The timelines for "Project Management Consultancy services to BESCOM for implementation of Upgradation of DAS in Bengaluru city Project" as detailed in the scope of the works and so incorporated in the Letter of Award, shall be deemed to be the essence of the Contract. The Contractor shall so organize his resources and perform his work as to complete the work in stipulated timelines.

14.2 The Contractor shall complete the work in phases as detailed in the scope of work within 10 months from the date of issue of work award. However, consequent to delay in execution of works attributable to BESCOM, the Contractor shall not be held responsible for the same.

15. EFFECTIVENESS OF THE CONTRACT

The Contract shall be considered as having come into force from the date of issue of DWA unless otherwise provided in the DWA.

16. COMPLETION TIME GUARANTEE

16.1. The Contractor guarantees that it shall attain complete the scope of works specified in the bid documents within the Time for Completion specified in the bid documents pursuant to GCC Clause 13 COMPLETION OF THE CONTRACT.

16.2. If the Contractor fails to comply with the Time for Completion in accordance with GCC Clause 13 for the whole of the facilities, (or a part for which a separate time for completion is agreed if any) then the Contractor shall pay to BESCOM as liquidated damages for such default and not as a penalty, without prejudice to BESCOM's other remedies under the Contract. Liquidated damages are as defined in GCC Clause 50 CONTRACTOR'S DEFAULT/LIQUIDATED DAMAGES.

17. GUARANTEE/WARRANTY

The consultant shall bear in mind that time is the essence of the Contract. If the consultant fails to complete the Scope of Work of the Project or any part thereof limited to the extent of work that will be carried out by the contractor of "Upgradation of DAS in Bengaluru City Project" during the ten months, within the timeline defined in the contract, BESCOM shall recover from the consultant as Liquidated Damage (LD) for such default and not as a penalty, without prejudice to BESCOM's other remedies under the Contract, the Liquidated damages are as defined in GCC Clause 50 CONTRACTOR'S DEFAULT/LIQUIDATED DAMAGES.

18. TAXES & DUTIES

Except as otherwise specifically provided in the Contract, the Consultant shall bear and pay all taxes, duties and levies assessed on the Consultant, its Sub-

Consultants, or their employees by all municipal, state or national government authorities in connection with the Project under the existing, amended, or enacted laws during period of this contract. The prices quoted by the Consultant shall be inclusive of all taxes, duties and levies.

Additional conditions regarding taxes and duties are as defined in Section II. Clause 11.5 Taxes and Duties.

19. PREPARATION / REVISION OF REPORTS AND DOCUMENTS

19.1. If during the performance of the Contract, Engineer shall decide and inform in writing/or through mail to the Contractor that the deliverables such as reports/recommendations/documents submitted to BESCOM are not meeting the expectations of the contract, the Contractor on receiving notice of such defects or deficiencies shall at his own expense within seven (7) days of receiving the notice, or otherwise, within such time as may be reasonably necessary for making it good, furnish revised reports/recommendations/documents up to the standards of the specifications as per BESCOM instructions. In case, the Contractor fails to do so, the Engineer may proceed to replace the reports/recommendations/documents so complained at the cost of the Contractor. Payments will not be made against such work and will be deducted from the payments due to the contractor.

19.2. In the event of emergency where in the judgment of the Engineer, delay would cause serious loss or damages, corrections or adjustment may be made by the Engineer or a third party chosen by the Engineer without advance notice to the contractor and the cost of such work shall be paid by the contractor. In the event such action is taken by the Engineer, the Contractor will be notified promptly and he shall assist where possible in preparation or making necessary corrections. This shall not relieve the Contractor of his liabilities under the terms and conditions of the contract.

19.3. Contractor's full and extreme liability under this clause shall be satisfied by the payment to BESCOM of extra cost, of such preparation/correction/revision of document as provided for in the contract, such extra cost being the ascertained difference between the price paid by BESCOM for such preparation/correction/revision of the document and the Contract Price apportioned for such preparation/correction/revision of the document and repayments of any sum paid by BESCOM to the Contractor in respect of such preparation/correction/revision of the document. Should BESCOM not do such preparation/correction/revision of the document, then the Contractor's extreme liability under this clause shall be limited to repayment of all sums paid by BESCOM under the Contract for such preparation/correction/revision of the document.

20. PATENT RIGHTS AND LOYALTIES

Royalties and Fees for Patents covering Articles, Intellectual property or Processes used in the Works shall be deemed to have been included in the Contract Price. Contractor shall satisfy, all demands that may be made at any time for such Royalties or Fees and they alone shall be liable for any Damages or Claims for Patent infringements and shall keep the BESCOM indemnified in that regard. Contractor shall, at their own Cost and expense, defend all Suits or Proceedings that may be instituted for alleged infringement of any Patents involved in the Works and, in case of an Award of Damages, Contractor shall pay for such Award. In the event of any Suit or other Proceedings instituted against BESCOM, the same shall be defended at the Cost and expense of Firm who shall also satisfy/comply with any Decree, Order or Award made against the BESCOM. Final Payment to Contractor by BESCOM will not be made while any such Suit or Claim remains unsettled.

21. DEFENCE OF SUITS

If any action in court is brought against BESCOM or Engineer or an officer or agent of BESCOM, for the failure, omission or neglect on the part of the Consultant to perform any acts, matters, covenants or things under the Contract, or for damage or injury caused by the alleged omission or negligence on the part of the Consultant, his agents, representatives or his Sub-Contractors, or in connection with any claim based on lawful demands of Sub-Contractors, workmen, suppliers or employees, the Consultant shall in all such cases indemnify and keep BESCOM, and the Engineer and/or his representative, harmless from all losses, damages, expenses or decrees arising of such action.

22. LIMITATION OF LIABILITIES

Except in cases of gross negligence or willful misconduct:

a) Neither Party shall be liable to the other Party for any indirect or consequential loss or damage, loss of use, loss of production, or loss of profits or interest costs, provided that this exclusion shall not apply to any obligation of the Consultant to pay liquidated damages to BESCOM, and
b) The aggregate liability of the Consultant to BESCOM, whether under the Contract, in tort, or otherwise, shall not exceed 10% of the amount specified in the Contract Price.

23. ENGINEER'S DECISION

23.1. In respect of all matters which are left to the decision of the Engineer including the granting or with-holding of the certificates,

the Engineer shall, if required to do so by the Contractor, give in writing a decision thereon.

23.2. If, in the opinion of the Contractor, a decision made by the Engineer is not in accordance with the meaning and intent of the Contract, the Contractor may file with the Engineer, within seven (7) days after receipt of the decision, a written objection to the decision. Failure to file an objection within the allotted time will be considered as an acceptance of the Engineer's decision and the decision shall become final and binding.

23.3. Engineer's decision and the filing of the written objection thereto shall be a condition precedent to the right to request arbitration. It is the intent of the Contract that there shall be no delay in the execution of the works and the decision of the Engineer as rendered shall be promptly observed.

24. POWER TO VARY OR OMIT WORK

24.1. No alterations, amendments, omissions, suspensions or variations of the Works (hereinafter referred to as 'variation') under the Contract as detailed in the Contract Documents, shall be made by the Contractor except as directed in writing by the Engineer, but Engineer shall have full powers subject to the provisions hereinafter contained, from time to time during the execution of Contract, by notice in writing to instruct the Contractor to make such variation without prejudice to the Contract. Contractor shall carry out such variation and be bound by the same conditions as far as applicable as though the said variations occurred in the Contract Documents. If any suggested variations would, in the opinion of the Contractor, if carried out, prevent him from fulfilling any of his obligations or guarantees under the Contract, he shall notify the Engineer thereof in writing and the Engineer shall decide forthwith whether or not, the same shall be carried out and if the Engineer in charge confirms his instructions, the Contractor's obligations and guarantees shall be modified to such an extent as may be mutually agreed. Any agreed difference in cost occasioned by any such variation shall be added to or deducted from the Contract Price as the case may be.

24.2. In the event of Engineer requiring any variation, a reasonable and proper notice shall be given to the Contractor to enable him to work his arrangement accordingly, and in cases where goods or documents are already prepared or any design, drawings or work done requires to be altered, then the contractor shall revise/correct/prepare the documents at no cost to BESCOM.

24.3. In any case in which the Contractor has received instructions from the Engineer as to the requirement of carrying out the alterations or additional or substituted work which either then or later on, will in the opinion of the Contractor, involve a claim for additional payment, the Contractor shall immediately and in no case later

than thirty (30) days, after receipt of the instructions aforesaid and before carrying out the instructions, advise the Engineer to that effect. But the Engineer shall not become liable for payment of any charges in respect of any such variations, unless the instructions for the performance of the same shall be confirmed in writing by the Engineer.

24.4. If any variation in the Works results in reduction of Contract Price, the parties shall agree, in writing, so to the extent of any change in the price, before the Contractor proceeds with the change.

24.5. In all the above cases, in the event of a disagreement as to the reasonableness of the said sum, the decision of the Engineer in charge shall prevail.

24.6. Notwithstanding anything stated above in this clause, the Engineer shall have the full power to instruct the Contractor, in writing, during the execution of the Contract to vary the quantities of the items or groups of items in accordance with the provisions of GCC clause 25 entitled 'Change of Quantity'. The Contractor shall carry out such variations and be bound by the same conditions as though the said variations occurred in the Contract Documents. However, the Contract Price shall be adjusted at the rates and the prices provided for the original quantities in the Contract.

25. CHANGE OF QUANTITY

During the execution of the Contract, BESCOM reserves the right to increase or decrease the Quantities of resource under the Contract but without any change in unit Price or other Terms and Conditions. Such Variations, unless otherwise specified in the accompanying Bid document and or Technical Specifications, shall not be subjected to any limitations for the individual resources but the total Variation in all such resources under the Contract shall be limited to a percentage of the Contract Price. BESCOM reserves the right to increase or decrease the ordered quantity by 25% of the Value of the Contract during the contract period. The firm shall provide the services of resources, if ordered, at the same agreed rates for respective categories as per contract.

The Contract Price shall accordingly be adjusted based on the Unit Rates available in the Contract for the change in Quantities as above. The base Unit Rates, as identified in the Contract shall however remain constant during the currency of the Contract.

26. COOPERATION WITH OTHER CONTRACTORS AND SYSTEM INTEGRATORS.

The Contractor shall agree to cooperate with BESCOM, M/s NCC Limited (Contractor for Upgradation of DAS in Bengaluru city project) and M/s OSI

(OEM of SCADA/DMS/OMS system). All correspondences related to this project shall be made by the consultants only with BESCOM. No data or document to be exchanged by the contractor with M/s NCC or M/s OSI.

27. NO WAIVER OF RIGHTS

Neither the inspection by BESCOM or the Engineer or any of their officials, employees, or agents nor any order by BESCOM or the Engineer for payment of money or any payment for or acceptance of, the whole or any part of the works by BESCOM or the Engineer, nor any extension of time, nor any possession taken by the Engineer shall operate as a waiver of any provision of the Contract, or of any power herein reserved to BESCOM or any right to damages herein provided nor shall any waiver of any breach in the Contract be held to be a waiver of any other or subsequent breach.

28. CERTIFICATE NOT TO AFFECT RIGHT OF BESCOM AND LIABILITY OF THE CONTRACTOR

No interim payment certificate of the Engineer, nor any sum paid on account by BESCOM, nor any extension of time for execution of the works granted by the Engineer shall affect or prejudice the rights of BESCOM against the Contractor or relieve the Contractor of his obligation for the due performance of the Contract, or be interpreted as approval of the works done or of documents furnished and no certificate shall create liability for BESCOM to pay for alterations, amendments, variations or additional works not ordered, in writing, by the Engineer or discharge the liability of the Contractor for the payment of damages whether due, ascertained, or certified or not or any sum against the payment of which he is bound to indemnify BESCOM, nor shall any such certificate nor the acceptance by him of any sum paid on account or otherwise affect or prejudice the rights of BESCOM against the Contractor.

29. PROGRESS REPORTS AND PHOTOGRAPHS

During the various stages of the work in pursuance of the Contract, the Contractor shall at his own cost submit periodic progress reports as may be reasonably required by the Engineer and as detailed in the scope of works with photographs etc. or as may be required by the Engineer.

The progress report shall be both in Hard / Soft Copy acceptable to the Employer and shall indicate:

a. Percentage completion achieved compared with the planned percentage completion for each activity; and

b. Where any activity is behind the program, giving comments and likely consequences stating the corrective action being taken.

Progress reports shall be furnished as follows:

Sl. No	Document	Frequency	Due Date/ Time	No. of Hard Copies to be submitted
1	Progress Report (Monthly)	Every month	Before 5th day of the subsequent month	1

C. CONTRACT SECURITY AND PAYMENTS

30. CONTRACT PERFORMANCE SECURITY/GUARANTEE

30.1. The Contractor shall furnish Contract Performance Guarantee for the proper fulfilment of the Contract in the prescribed form-2 within fifteen (15) days of issuance of 'Letter of Intent'.

30.2. Performance Bank Guarantee(PBG) shall be equal to 10% of the Contract Price. The Guarantee shall be valid till expiry of 90 (Ninety) days after the completion of the Contract period. In case of any changes in Security Deposit as per Government orders, Contractor has to adhere to government orders.

30.3. PBG must be sent to the office of the undersigned directly by the Banker. In the event of the contractor failing to deposit such security within the prescribed date BESCOM shall have full discretion to cancel the LOI and black list the firm at the discretionary of BESCOM.

30.4. All charges what so ever such as premium, commission etc., with respect to Performance Bank Guarantee shall be borne by the contractor.

30.5. Performance Bank Guarantee shall be discharged/returned by BESCOM upon being satisfied that there has been no due in performance of the obligations of the Contractor under the contract. However, no interest shall be payable on the PBG.

30.6. In the event of the contractor being unable to service the contract for whatever reason, BESCOM shall have the right to invoke the PBG. BESCOM shall notify the Contractor in writing of the exercise of its right to receive such compensation within 14 days, indicating the contractual obligation(s) for which the Contractor is in default.

30.7. BESCOM shall also be entitled to make recoveries from the Contractor bills, liquidated damages or any other payment due, in case of any error/omission on contractor's part.

31. TERMS OF PAYMENT

31.1 Payment will be processed on monthly basis throughout the contract duration against submission of duly signed monthly invoices in triplicate and timesheet of individual consultant.

31.2 Payment shall be made at the Office of the undersigned by AGM(F&C), DAS, upon submission of invoices duly certified by the Manager(DAS), AGM(DAS) and DGM(DAS) and countersigned by GM(DAS).

31.3 BESCOM shall verify the bill and supporting documents after receipt of invoice from the Contractor. BESCOM shall release the payment after deducting applicable taxes, penalties/liquidated damages and any other recoverable. All the payments made by BESCOM will be in Indian Rupee only. No payment made by BESCOM herein shall be deemed to constitute acceptance by BESCOM of the goods or services or any part(s) thereof.

31.4 If any excess payment has been made by BESCOM due to difference in quoted price in the proposal and Contractor's invoice, BESCOM may without prejudice to its rights recover such amounts by other means after notifying the Contractor or deduct such excess payment from any payment subsequently falling due to the Contractor.

31.5 At its own discretion, BESCOM shall make payments either through crossed bank cheque or electronic bank transfer.

31.6 Wherever applicable, tax deduction certificates shall be issued at the end of every quarter against deduction of statutory taxes.

31.7 Services provided, and/or expenses incurred that exceed the maximum contract sum without BESCOM's written consent will be at Contractor's financial risk and BESCOM shall not be obligated to pay for any such services or expenses.

31.8 No partial payment by BESCOM shall constitute or be construed as final acceptance or approval of any services or as a release of any of Contractor's obligations or liabilities with respect to such services.

31.9 Deliverables by the Contractor:

- Documents prepared by the firm as requested by BESCOM during the month
- Recommendations/ inputs by the firm for the documents shared by BESCOM during the month
- Timesheets and progress reports with details of work carried out by individual consultant during the month

31.10 Timelines for deliverables by the firm:

- Whenever a document/task is submitted for review/preparation and recommendation (either by e-mail or hardcopy), the Contractor shall review/prepare and submit recommendation to BESCOM in an expeditious and timely manner as is consistent with professional standards, but not exceeding ten days from the date of task submission by BESCOM.
- Timesheets of individual consultant for the month shall be submitted within the first three working days of the subsequent month along with invoices.

- Monthly progress reports shall be submitted as per timelines defined in Clause 29.

32. Exceptions to Payment:

Regardless of any other provision of this contract, BESCOM shall not be obligated to make any payment requested by Consultant under this contract if any of the following conditions precedent exists:

a. Consultant is in breach or default under this Contract;
b. The requested payment includes services not performed in accordance with this Contract; provided, however, payment shall be made for the balance of the services that are performed in accordance with this Contract;
c. The Total of Consultant's invoices exceed the maximum contract sum.

33. Review of Work:

BESCOM will review the Consultant's documents at the completion of each stage as described in the scope of work. BESCOM's review/ comments/decisions regarding the documents will be furnished to the Consultant in a reasonably prompt manner. BESCOM will notify the Consultant in writing of any material error or omission or other defect in the project or any conflict in the contract documents that BESCOM becomes aware of, but BESCOM shall have no obligation or duty to investigate whether such faults, defects, or conflicts exist.

34. Time for Response:

BESCOM shall furnish required information and services and shall render approvals and decisions as expeditiously as necessary for the orderly progress of the Consultant's services and of the Work.

35. Acceptance of Work:

Agreement –All work performed under this Contract shall be completed to the satisfaction of the BESCOM's representative assigned to the project. The BESCOM's representative shall decide all questions regarding Consultant's performance under the Contract and such decisions shall be final and conclusive.

36. Correction of Work:

Consultant's services shall be reasonably accurate and free from material errors or omissions. Upon notice, Consultant shall promptly correct any known or discovered error, omission, or other defect without any additional cost or expense to BESCOM. Should Consultant's services not conform to the requirements of this Contract and the Scope of work as determined by the BESCOM's representative, BESCOM may inform the

Consultant in writing to re-perform such services at no additional expense to the BESCOM or deduct the fees for such services from any other fees payable to the Consultant.

37. Phasing:

Consultant shall not proceed beyond any previously authorized phase of the work for a project unless authorized by the BESCOM in writing, except at the Consultant's own financial risk. It is the responsibility of Consultant to arrange logistics, computers, etc that are required for site visits and carrying out the scope of works defined above.

38. Liability:

BESCOM's approval or acceptance of Consultant's services will not release the Consultant from any liability for such services because BESCOM is, at all times, relying upon Consultant's skill and knowledge in performing the services listed in the scope of works.

39. Representative:

Consultant shall designate a representative primarily responsible for its services under this Contract. The designated representative shall act on behalf of Consultant with respect to all activities in the Consultant's scope of work and shall be available as required for the benefit of the project and the BESCOM. The designated representative shall not be changed without prior approval of the BESCOM, which approval shall not be unreasonably withheld.

40. Removal and/or Replacement of Personnel:

a) Except as BESCOM may otherwise agree, no changes shall be made in the Key Personnel. If, for any reason beyond the reasonable control of the Consultants, it becomes necessary to replace any of the Key Personnel, the Consultants shall forthwith provide as a replacement a person of equivalent or better qualifications.
b) If BESCOM finds that any of the Personnel have
    i. committed serious misconduct or has been charged with having committed a criminal action, or
    ii. have reasonable cause to be dissatisfied with the performance of any of the Personnel, then the Consultants shall, at BESCOM's written request specifying the grounds therefor, forthwith provide as a replacement a person with qualifications and experience acceptable to BESCOM.
c) The Consultants shall have no claim for additional costs arising out of or incidental to any removal and/or replacement of Personnel.

41. Documentation:

Consultant shall fully document its project activities, in drawings, reports or other methods as appropriate to the scope of work and as identified in the Project Proposal. Consultant shall bear the cost of providing all plans, specifications and other documents used by the Consultants.

Consultant shall not claim for any compensation of account of no/less work or any damages incurred during the tenancy of the hired service.

42. PENALTY

Whenever a document/task is submitted for review/preparation and recommendation, the Consultant shall review/prepare and submit its recommendation to BESCOM in an expeditious and timely manner as is consistent with professional standards, but not exceeding ten days from the date of task submission by BESCOM. In the event of delay in submission of document/recommendation beyond ten days, a penalty of amount equivalent to ½ percent of the monthly charges inclusive of taxes per week of delay subject to a maximum of 10% of the contract value will be recovered /deducted from the invoice or PBG submitted by the contractor.

43. DEDUCTIONS FROM CONTRACT PRICE

All costs, damages or expenses which BESCOM may have paid, for which under the Contract the Contractor is liable, will be claimed by BESCOM. All such claims shall be billed by BESCOM to the Contractor regularly as and when they fall due. Such bills shall be supported by appropriate and certified vouchers or explanations, to enable the Contractor to properly identify such claims. Such claims shall be paid by the Contractor within thirty (30) days of the receipt of the corresponding bills and if not paid by the Contractor within the said period, BESCOM may then deduct the amount, from any money due or becoming due by him to the Contractor under the Contract or may be recovered by sections of Law or otherwise.

D. RISK DISTRIBUTION

44. TRANSFER OF TITLE

In case, if any part of the entity which is involved in the contract is sold out/dissolution of Partnership occurs during execution of contract, which affects the successful completion of the project, BESCOM will levy additional 10% of Contract Value as Additional Security deposit. This Additional Security deposit will be returned after successful completion of the contract.

45. INSURANCE

The Contractor

a) shall at its own expense take out and maintain, and shall cause any Sub-Consultant to take out and maintain, at their (or the Sub-Consultant', as the case may be) own cost but on terms and conditions approved by the BESCOM, insurance against the risks, and for the coverage; and

b) at BESCOM's request, shall provide evidence to the BESCOM showing that such insurance has been taken out and maintained and that the current premiums have been paid.

46. LIABILITY FOR ACCIDENTS AND DAMAGES

Under the Contract, the Consultant shall be responsible for loss or accidents which might arise owing to non – observation of safety requirements or else wise by its staff during delivering the scope of works.

47. DEMURRAGE, WHARFAGE, ETC.

All demurrage, wharfage, and other expenses incurred while delivering the scope of works shall be to the account of the Consultant.

48. FIRST AID

To deal with emergency/accidental eventualities at works site, the Consultant shall make all such arrangements necessary, such as services of an ambulance, etc. for transportation to hospital at its cost.

49. FORCE MAJEURE

Force Majeure means any event or circumstance or combination of events and circumstances including those stated below that wholly or partly prevents or unavoidably delays BESCOM or the Consultant in the performance of their obligation under this Contract, but only if and to the extent that such events or circumstances are not within the reasonable control, directly or indirectly, of the affected Party and could not have been avoided if the affected Party had taken reasonable care or complied with prudent utility practices.

- Act of God, including, but not limited to lightning, drought, fire and explosion (to the extent originating from a source external to the Site), earthquake, volcanic eruption, landslide, flood, cyclone, typhoon, tornado, war embargo, or exceptionally adverse weather conditions which are in excess of the statistical measures for the last hundred (100) years, or
- Any act of war (whether declared or undeclared), invasion, armed conflict or act of foreign enemy, blockade, embargo, riot, epidemics, employee strikes or
- Any event or circumstance of a nature analogous to any of the above.

50. CONTRACTOR'S DEFAULT/LIQUIDATED DAMAGES

50.1 The contractor/consultant shall bear in mind that time is the essence of the Contract. If the consultant fails to complete the Scope of Work of the Project or any part thereof limited to the extent of work that will be carried out by the contractor of "Upgradation of DAS in Bengaluru City Project" during the ten months, within the timeline defined in the contract, BESCOM shall recover from the consultant as Liquidated Damage (LD) for such default and not as a penalty, without prejudice to the BESCOM's Other remedies under the Contract. For imposition of LD, the loss/ damages suffered by BESCOM due to delays by the consultant are the basic criteria. In such cases, a nominal LD i.e., a sum equivalent to half percent (0.5%) of the total Contract Price for each week of delay or part thereof which will elapse between the schedule time for completion and actual time for completion of the Project will be recovered.

50.2 The recovery towards compensation should take place when loss/damage has actually taken place on account of delay caused by the consultant. Even if there is a delay in execution of the Contract and reasons for delay are attributable to the consultant but the BESCOM has not suffered any actual out-of-pocket loss specifically due to delay in performance of the Contract, as evidenced by written documentation setting forth the basis for such loss, no sum as LD is recoverable from the Consultant.

50.3 The total recovery against liquidated damage in all cases, however, shall not exceed ten percent (10%) of the total Contract Price. If the amount of LD exceeds this limit, BESCOM reserves right to forfeit the Performance Bank Guarantee defined in Clause 30.0 Contract Performance Bank Guarantee and terminate the Contract.

51. Suspension of Work

BESCOM reserves the right to suspend and reinstate execution of the whole or any part of the works without invalidating the provisions of the Contract. Orders for suspension or reinstatement of the Works will be issued by BESCOM to the Contractor in writing. The time for Completion of the Works will be extended for a period equal to duration of the suspension.

Any necessary demonstrable cost incurred by the contractor as a result of such suspension of the works will be paid by the BESCOM, provided such costs are substantiated to the satisfaction of BESCOM.

BESCOM shall not be responsible for any liabilities if suspension or delay is due to some default on the part of the contractor.

Contractor shall not be entitled to claim compensation for any loss or damage sustained by him by reason of temporary suspension of works as aforesaid.

52. TERMINATION OF CONTRACT

52.1 By BESCOM

BESCOM may terminate this Contract, by not less than thirty (30) days' written notice of termination to the Consultants, to be given after the occurrence of any of the events specified in paragraphs (a) through (d) of this Clause 52.1 and sixty (60) days' in the case of the event referred to in (e):

a. if the Consultants do not remedy a failure in the performance of their obligations under the Contract, within thirty (30) days of receipt after being notified or within such further period as BESCOM may have subsequently approved in writing;
b. if the Consultants (or any of their Members) become insolvent or bankrupt;
c. if, as the result of Force Majeure, the Consultants are unable to perform a material portion of the Services for a period of not less than sixty (60) days; or
d. if the consultant, in the judgment of BESCOM has engaged in corrupt or fraudulent practices in competing for or in executing the Contract.
   For the purpose of this clause:
   "corrupt practice" means the offering, giving, receiving or soliciting of anything of value to influence the action of a public official in the selection process or in contract execution.

   "fraudulent practice" means a misrepresentation of facts in order to influence a selection process or the execution of a contract to the detriment of GOK, and includes collusive practice among consultants (prior to or after submission of proposals) designed to establish prices at artificial non-competitive levels and to deprive GOK of the benefits of free and open competition.

e. if BESCOM, in its sole discretion and for any reason whatsoever, decides to terminate this Contract.

52.2 By the Consultant

The Consultants may terminate this Contract, by not less than thirty (30) days' written notice to BESCOM, such notice to be given after the occurrence of any of the events specified in paragraphs (a) through (c) of this Clause 52.2:

a. if BESCOM fails to pay any monies due to the Consultants pursuant to this Contract and not subject to dispute pursuant to Clause E hereof within forty-five (45) days after receiving written notice from the Consultants that such payment is overdue;

b. If BESCOM is in material breach of its obligations pursuant to this Contract and has not remedied the same with in forty-five (45) days (or such longer period as the Consultants may have subsequently approved in writing) following the receipt by BESCOM of the Consultants' notice specifying such breach;

c. if, as the result of Force Majeure, the Consultants are unable to perform the services for a period of not less than sixty (60) days.

53. FRUSTRATION OF CONTRACT

53.1. In the event of frustration of the Contract because of supervening impossibility in terms of Section 56 of the Indian Contract Act, parties shall be absolved of their responsibility to perform the balance portion of the Contract, subject to provisions contained in sub-clause 56.3 below.

53.2. In the event of non-availability or suspension of funds for any reasons, whatsoever (except for reason of wilful or flagrant breach by BESCOM and/or Contractor) then the works under the Contract shall be suspended.

53.3. Furthermore, if BESCOM is unable to make satisfactory alternative arrangements for financing to the Contractor in accordance with the terms of the Contract within three months of the event, the parties hereto shall be relieved from carrying out further obligations under the Contract treating it as frustration of the Contract.

53.4. In the event referred to in sub-clauses 57.1 & 57.2 above the parties shall mutually discuss to arrive at reasonable settlement on all issues including amounts due to either party for the work already done on "Quantum merit" basis, which shall be determined by mutual agreement between the parties.

54. GRAFTS AND COMMISSIONS ETC.

Any graft, commission, gift or advantage given, promised or offered by or on behalf of the Contractor or his partner(s), agent(s), officer(s), director(s), employee(s) or servant(s) or any one on his or their behalf in relation to the obtaining or to the execution of this or any other Contract with BESCOM, shall in addition to any criminal liability which it may incur, subject the Contractor to the cancellation of this and all other Contracts and also to payment of any loss or damage to BESCOM resulting from any cancellation. BESCOM shall then be entitled to deduct the amount so payable from any money otherwise due to Contractor under the Contract.

55. Confidential Information & Intellectual Property

BESCOM and the Consultant shall keep confidential and shall not, without the written consent of the other Party here to, divulge to any Third Party any documents, data or other information furnished directly or indirectly by the other Party hereto in connection with the Contract, whether such information has been furnished prior to, during or following termination of the Contract.

The Consultant, their Sub-Consultant, and the Personnel of either of them shall not, disclose any proprietary or confidential information relating to the Project, the Services, this Contract, or BESCOM business or operations without the prior written consent of BESCOM. A Non-Disclosure agreement as per prevailing data sharing policy of BESCOM shall be executed between the parties before signing of contract and any information is shared.

56. Consultant's staff and their conduct

The Consultant on award of Project shall deploy qualified professionals as required for executing this Project. The terms and conditions regarding the Consultant staff and their conduct are as below:

If at any time the Project is materially delayed by Consultant and, in the reasonable opinion of BESCOM, any additional, qualified, experienced professionals are considered necessary to timely complete the Project, they shall be deployed by the Consultant without any additional charge, subject to the provisions regarding delay and extension. The Consultant shall ensure competent and efficient supervision of the services to the satisfaction of the BESCOM

The Consultant shall be solely responsible for the proper behavior of his employees and staff employed by him/deputed by him to provide consultancy services. The Consultant shall exercise proper degree of control over them and in particular without prejudice to the said generality the Consultant shall be bound to prohibit/prevent any of his employees (as stipulated above) from trespassing or acting in anyway detrimental or prejudicial to the interest of the community or the properties or occupiers of land or properties in the neighborhood. In the event of such trespassing, the Consultant shall be responsible for all consequent claims or actions for damages or injury or any other grounds whatsoever. The decision of the BESCOM upon any matter arising under this clause shall be final.

If and required by BESCOM, all Consultant's personnel entering upon the BESCOM's premises shall be properly identified by badges of a type acceptable to the BESCOM which must be worn at all times on the BESCOM's premises.

E. RESOLUTION OF DISPUTES

57. SETTLEMENT OF DISPUTES

57.1 A Party claiming that a Dispute has arisen under this Contract must give the other Party a written notice of the particulars of the Dispute.

57.2 Any dispute(s) or difference(s) arising out of or in connection with the Contract shall, to the extent possible, be settled amicably between the parties.

57.3 If any dispute or difference of any kind, whatsoever, shall arise between BESCOM and the Consultant, arising out of the Contract for the performance of the Works whether during the progress of the Works or after its completion or whether before or after the termination, abandonment or breach of the Contract, it shall, be referred to and settled by the Managing Director, BESCOM who, within a period of thirty (30) days after being requested by either party to do so, shall give written notice of his decision to BESCOM and the Consultant.

57.4 Save as hereinafter provided, such decision in respect of every matters so referred shall be final and binding upon the parties until the completion of the Works and shall forthwith be given effect to by the Consultant who shall proceed with the Works with all due diligence, whether he or BESCOM requires arbitration as hereinafter provided or not.

57.5 If after the Managing Director, BESCOM has given written notice of his decision to the parties, no claim to arbitration has been communicated to him by either party within thirty (30) days from the receipt of such notice, the said decision shall become final and binding on the parties.

57.6 In the event of the Managing Director, BESCOM failing to notify his decision as aforesaid within thirty (30) days after being requested as aforesaid, or in the event of either BESCOM or the Consultant being dissatisfied with any such decision, or within thirty (30) days after the expiry of the first mentioned period of thirty days, as the case may be, either party may require that the matters in dispute be referred to arbitration as hereinafter provided.

58. ARBITRATION

58.1 All disputes or differences in respect of which the decision, if any, of the Managing Director, BESCOM has not become final or binding as aforesaid shall be settled by arbitration in the manner hereinafter provided.

58.2 A Party claiming that a Dispute has arisen under this Contract

must give the other Party a written notice of the particulars of the Dispute.

58.3 Any dispute(s) or difference(s) arising out of or in connection with the Contract shall, to the extent possible, be settled amicably between the parties.

58.4 If the party fails to resolve such a dispute or difference by mutual consultation within thirty (30) days from the commencement of such dispute and difference, either party may require that the dispute be referred to arbitration under the Arbitration and Conciliation Act, 1996 (Indian) and subsequent Amendments made thereon, to be adjudicated by a sole arbitrator to be appointed by mutual agreement of both the parties and the award of the arbitrator shall be final and conclusive and binding upon both the Parties. (The date of commencement of the dispute shall be taken from the date when this clause reference is quoted by either party in a formal communication clearly mentioning existence of dispute or as mutually agreed).

58.5 The arbitral procedure shall be conducted in English language.

58.6 The cost of arbitration including the fees of arbitrator shall be borne by both the parties equally.

58.7 During the settlement of disputes and Arbitration proceedings, both parties shall be obliged to carry out their respective obligations under the contract.

58.8 The award of the arbitrator shall be final and conclusive and binding upon the parties.

58.9 The courts of Bangalore only shall have the exclusive jurisdiction to deal with any issues arising out of this Contract.

58.10 No decision given by the Managing Director, BESCOM in accordance with the foregoing provisions shall disqualify him as being called as a witness or giving evidence before the arbitrators on any matter whatsoever relevant to the dispute or difference referred to the arbitrators as aforesaid.

59. RECONCILIATION OF ACCOUNTS

The Contractor shall prepare and submit every three (3) months, a statement covering payments claimed and the payments received vis-â-vis the works executed, for reconciliation of accounts with BESCOM.

60. NOTICES

Notice of Default given by either party to the other party under the Contract shall be in writing and shall be deemed to have been duly and properly served upon the parties hereto if delivered against acknowledgement or by Fax or by registered mail with

acknowledgement duly addressed to the signatories at the addresses mentioned herein above.

61. Compliance with Laws and Regulations

The laws and regulations which are applicable to the Consultant and under which the Contract is to be constructed shall be the prevailing Indian Laws and Regulations. The other terms and conditions regarding compliance with laws and regulations are as below:

The Consultant shall, in all matters arising in the performance of the Contract, comply with in all respects, give all notices and pay all fees required by the provisions of any national or state statute, ordinance or other law or any regulation or by-law of any duly constituted authority.

The Consultant shall adhere to the statutory provisions under Payment of Minimum Wages Act, Contract Labor (Regulation & Abolition) Act, Employee's Provident Fund & Miscellaneous Provisions Act, Workmen's Compensation Act, Right to Information Act, and other relevant Statutes. All liabilities arising out of the non-compliance of the Law of the Land by Consultant or its personnel will have to be borne by the Consultant, and the BESCOM will not be responsible in any manner whatsoever for the same.

The Contract shall in all respect be construed and interpreted in accordance with the Laws in force in India, including any such Laws passed or made or coming into force during the period of the Contract.

All obligations of the parties created hereunder are enforceable in Courts of Bangalore. Bangalore shall be the sole venue for any legal action to enforce this contract.

62. Severability

Should any provision(s) of this Contract Agreement be held invalid or unenforceable in any respect that provision shall not affect any other provisions and this Contract Agreement shall be construed as if the invalid or unenforceable provision had not been included.

Sd/-
General Manager,
DAS, BESCOM